

226709

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**ENTERED  
Office of Proceedings**

**MAR 29 2019**

**Part of  
Public Record**

**STB DOCKET NO. AB-1043 (Sub-No. 1)**

**MONTREAL, MAINE & ATLANTIC RAILWAY, LTD –  
DISCONTINUANCE OF SERVICE AND ABANDONMENT –  
IN AROOSTOOK AND PENOBSHOT COUNTIES, MAINE**

**RESPONSE OF IRVING WOODLANDS LLC AND IRVING FOREST PRODUCTS,  
INC. TO THE REPLY OF THE MONTREAL, MAINE & ATLANTIC RAILWAY, LTD  
TO MOTION FOR EXTENSION OF FILING DEADLINES**

Irving Woodlands LLC and Irving Forest Products, Inc. (collectively, "Irving") hereby respond to the Reply of the Montreal, Maine & Atlantic Railway, Ltd. ("MMA") to the Motion for Extension of Filing Deadlines ("Motion") for the limited purpose of addressing a factual misrepresentation made by MMA.<sup>1</sup> MMA opposes the Motion, in part, on grounds that an extension is unnecessary because MMA has "actively cooperated in providing information requested to date by other parties with an interest in this proceeding, such as Irving Woodlands LLC and Irving Forest Products, Inc." MMA Reply, ¶ 3. To date, however, MMA has provided very little information to Irving and has done so in a protracted and drawn out manner that has consumed valuable time in this compact procedural schedule.

First, MMA filed a public version of its Application that heavily over-redacted clearly public information. MMA has since agreed to redesignate a significant portion of its Application from "Highly Confidential" to "Confidential," but only after two weeks of negotiations with Irving. Although Irving contends that much of that "Confidential" information should in fact be designated as "Public," that would require an expenditure of scarce time and resources to argue

<sup>1</sup> Although the Board typically does not permit a reply to a reply, it has permitted them when necessary to have a complete record.

the issue before the Board and provide no greater benefit to Irving than is already provided by the "Confidential" designations to which MMA has agreed. Consequently, however, the public will never see information to which it clearly is entitled.

Second, the "Highly Confidential" version of MMA's Application does not identify what information has been designated "Highly Confidential." Such designations typically are made by bracketing or highlighting the "Highly Confidential" text. In the absence of such identification, the reader cannot tell which text is "Highly Confidential" without reading the "Public" and "Highly Confidential" versions side by side. This is an additional time consuming burden upon all parties and the Board.

Third, MMA has been highly resistant to providing the spreadsheets and computer runs in its Application in their native computer format. Despite the presence of a protective order in this proceeding, MMA has raised objections based upon the proprietary nature of the programs used by its consultants. In addition, MMA either is unaware of, or has chosen to ignore, the Board's admonition that: "Where a party is submitting computer evidence, it is important that the underlying data used in the analysis (including programs and programming method, and all relevant computer inputs and outputs) be made available so that opposing parties may assess and comment on the validity of such evidence." Utility Fuels, Inc. v. Burlington Northern Railroad Company et al., Docket 39002, 1984 ICC Lexis 407 at \*19 (June 29, 1984) (internal quote omitted). Only today has MMA provided even a portion of its Excel spreadsheet files to Irving, and then for just a single witness. If MMA does not provide its electronic files in their native format, more time will be lost to a Motion to Compel. However, even if MMA does ultimately produce these files, this type of stalling still will have consumed valuable time. This is an abuse of an expedited process that Congress surely did not envision.

MMA's claim of "active cooperation" is misleading at best, and disingenuous at worst. Its cooperation has been reluctant, incomplete, and dilatory, which is a principal reason why an extension of the procedural schedule is needed.

Respectfully submitted,



---

Karyn A. Booth  
Jeffrey O. Moreno  
David E. Benz  
Thompson Hine LLP  
1920 N Street, N.W., Suite 800  
Washington, DC 20036  
202.263.4108  
202.331.8330 (fax)

*Attorneys for Irving Woodlands LLC and  
Irving Forest Products, Inc.*

March 29, 2010

## **CERTIFICATE OF SERVICE**

I certify that on this 29th day of March, 2010 I caused a copy of the foregoing to be served by e-mail or by first class mail, postage prepaid upon the following:

James E. Howard  
1 Thompson Square, Suite 201  
Charlestown, MA 02129  
[jim@jehowardlaw.com](mailto:jim@jehowardlaw.com)

Toni L. Kemmerle  
Chief Counsel  
Department of Transportation, State of Maine  
16 State House Station  
Augusta, ME 04333-0016  
[toni.kemmerle@maine.gov](mailto:toni.kemmerle@maine.gov)

Eric M. Hocky  
Thorp Reed & Armstrong LLP  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
[ehocky@thorpreed.com](mailto:ehocky@thorpreed.com)

Linda J. Morgan  
Charles H.P. Vance  
Covington & Burling LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004-2401  
[lmorgan@cov.com](mailto:lmorgan@cov.com)  
[cvance@cov.com](mailto:cvance@cov.com)

Donald G. Avery  
Peter Pfohl  
Slover & Loftus  
1224 Seventeenth Street, NW  
Washington, DC 20036-3003  
[dga@slvoerandloftus.com](mailto:dga@slvoerandloftus.com)  
[pap@slvoerandloftus.com](mailto:pap@slvoerandloftus.com)

Scott G. Knudson  
Briggs and Morgan, PA  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
[sknudson@briggs.com](mailto:sknudson@briggs.com)

Arkon Horne  
Fraser Papers  
P.O. Box 749  
Ashland, ME 04732  
[arkon@ftl.fraserpapers.com](mailto:arkon@ftl.fraserpapers.com)

John Cashwell  
Portage Wood Products, LLC  
P.O. Box 156  
Portage, ME 04768  
[jcashwell@sevenislands.com](mailto:jcashwell@sevenislands.com)

Honorable Susan M. Collins  
United States Senate  
413 Dirksen Senate Office Building  
Washington, DC 20510

Honorable Michael H. Michaud  
United States House of Representatives  
Washington, DC 20515

Honorable James L. Oberstar  
United States House of Representatives  
Washington, DC 20515

  
\_\_\_\_\_  
David E. Benz